**A** **BILL**

TO AMEND TITLE 58 OF THE 1976 CODE, BY ADDING CHAPTER 10 TO ESTABLISH THE CRIME OF SENDING CERTAIN ELECTRONIC MESSAGES TO MINORS, TO CREATE A CHILD PROTECTION REGISTRY, TO PROVIDE NOTICE OF CONTACT POINTS TO WHICH A MINOR HAS ACCESS, TO PRESCRIBE THE POWERS AND DUTIES OF CERTAIN STATE AGENCIES AND OFFICIALS, TO CREATE A FUND AND PROVIDE FOR FEES, TO PROVIDE FOR PENALTIES AND REMEDIES; AND TO AMEND SECTION 16-16-20, RELATING TO COMPUTER CRIMES AND PENALTIES, TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO WILFULLY, KNOWINGLY, MALICIOUSLY, OR WITHOUT AUTHORIZATION TO DIRECTLY OR INDIRECTLY ACCESS OR CAUSE TO BE ACCESSED A CONTACT POINT AS DEFINED IN SECTION 58‑10‑10(1) THAT HAS BEEN REGISTERED FOR MORE THAN THIRTY CALENDAR DAYS WITH THE PUBLIC SERVICE COMMISSION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act shall be known and may be cited as the “Children’s Protection Registry Act”.

SECTION 2. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 10

Children’s Protection Registry Act

Section 58‑10‑10. As used in this chapter:

(1) ‘Contact point’ means any electronic identification to which messages can be sent, including:

(a) an instant message identity;

(b) a wireless telephone, a personal digital assistant, a pager number, or any other similar wireless communication device;

(c) a facsimile number;

(d) an electronic mail address; or

(e) other electronic addresses subject to rules promulgated by the commission.

(2) ‘Commission’ means the Public Service Commission.

(3) ‘Internet domain name’ means a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet authorities, comprising a series of character strings separated by periods, with the right‑most string specifying the top of the hierarchy.

(4) ‘Minor’ means an individual under eighteen years of age.

(5) ‘Person’ means an individual, corporation, association, partnership, or any other legal entity.

(6) ‘Registry’ means the Child Protection Registry created under this chapter.

Section 58‑10‑20. (A) The commission shall establish and operate, or contract with a qualified third party to establish and operate, the Child Protection Registry. The commission or a third party administrator shall establish procedures, to the extent possible, to prevent the use or disclosure of protected contact points as required under Section 58‑10‑50. If the commission elects to contract with a third party, the commission shall give due consideration to any person located in this State.

(B) A parent, guardian, individual, or an entity under subsection (D) who is responsible for a contact point to which a minor may have access may register that contact point with the commission under rules promulgated by the commission. The commission shall establish procedures to ensure that a registrant meets the requirements of this subsection.

(C) A registration under this section shall not exceed three years. If the contact point is established for a specific minor, the registration expires the year the minor turns eighteen years of age. A registration can be revoked or renewed by the registrant upon notification to the commission.

(D) Schools and other institutions or entities primarily serving minor children may register one or more contact points with the commission. An entity under this subsection may make one registration for all contact points of the entity, and the registration may include the entity’s internet domain name under rules promulgated by the commission.

(E) No fee or charge shall be assessed or incurred by a person registering a contact point under this chapter.

(F) The commission shall establish a mechanism for senders to verify compliance with the registry.

(G) A person desiring to send a message described in Section 58‑10‑40 shall pay the commission a fee for access to the mechanism required under subsection (F) of this section. The fee required under this subsection shall be set by the commission. The fee shall not exceed .03 cents and shall be based on the number of contact points checked against the registry for each time a contact point is checked. The mechanism to verify compliance under subsection (F) of this section and the fee required under this subsection shall be established under rules promulgated by the commission.

(H) The fees collected under this chapter shall be credited to the following:

(1) eighty‑five percent of the fees to the fund created under Section 58‑10‑30;

(2) not less than fifteen percent of the fees to the Attorney General to cover the costs of investigating, enforcing, and defending this act. The commission may reimburse the Attorney General from the fund created under Section 58‑10‑30 for any costs incurred under this chapter that exceed the fees credited under this section.

Section 58‑10‑30. (A) There is established in the State Treasury the Children’s Protection Registry Fund. This fund is separate and distinct from the general fund of the State and all other funds. Money shall be deposited into the fund as required by Section 58‑10‑20(H)(1).

(B) The commission shall expend money from the fund only for the purposes of administering this chapter and for the investigation, enforcement, and defense of this act.

(C) Earnings and interest on this fund must be credited to it and any balance at the end of a fiscal year carries forward to the fund in the succeeding fiscal year.

Section 58‑10‑40. (A) A person shall not send, cause to be sent, or conspire with a third party to send a message to a contact point that has been registered for more than thirty calendar days with the commission if the primary purpose of the message is to, directly or indirectly, advertise or otherwise link to a message that advertises a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving.

(B) A person desiring to send a message described in subsection (A) shall use the mechanism created under Section 58‑10‑20(F) to ensure compliance with this chapter.

(C) The consent of a minor or third party to receive the message is not a defense to a violation of this section.

(D) A person does not violate this chapter because the person is an intermediary between the sender and recipient in the transmission of an electronic message that violates this chapter or unknowingly provides transmission of electronic messages over the person’s computer network or facilities that violate this chapter.

(E) The sending of a message described in subsection (A) is prohibited only if it is otherwise a crime for the minor to purchase, view, possess, participate in, or otherwise receive the product or service.

Section 58‑10‑50. (A) A person shall not release to another person information concerning persons or provide access to contact points or other information contained on the registry except as provided by this chapter.

(B) A person shall not sell or use the registry for any reason other than to meet the requirements of this chapter.

(C) A person shall not access or attempt to access the registry except as provided by this chapter.

(D) The registry created under this chapter is not subject to the Freedom of Information Act under Chapter 4, Title 30.

Section 58‑10‑60. A court of this State may exercise personal jurisdiction over a nonresident as to an action or proceeding authorized by this chapter in accordance with the provisions of Part 8, Chapter 2, Title 36.

Section 58‑10‑70. (A) A civil action based on the computer crime established under this chapter may be brought by an authorized individual or the registrant of the contact point on behalf of a minor who has received a message in violation of this chapter.

(B) A civil action based on the computer crime established under this chapter may be brought by a person through whose facilities the message was transmitted in violation of this chapter.

(C) A civil action based on the computer crime established under this chapter may be brought by the Attorney General against a person who has violated this chapter.

(D) In each action brought under this section, the prevailing party may be awarded reasonable attorney fees if the action is found by the court to be frivolous.

(E) A person bringing an action under this section may recover one of the following:

(1) actual damages, including reasonable attorney fees; or

(2) in lieu of actual damages, recover the lesser of the following:

(a) $5,000.00 per each message received by a recipient or transmitted.

(b) $250,000.00 for each day that the violation occurs.

(F) If the Attorney General has reason to believe that a person has violated this act, the Attorney General may investigate the business transactions of that person. The Attorney General may require that person to appear, at a reasonable time and place, to give information under oath and to produce such documents and evidence necessary to determine whether the person is in compliance with the requirements of this chapter.

(G) Any civil penalties collected by the Attorney General under this section shall be credited to the Attorney General for the costs of investigating, enforcing, and defending this act.

Section 58-10-80. (A) The Attorney General and the judicial circuit solicitors shall investigate complaints received concerning violations of this chapter. A person violating the provisions of this chapter is guilty of a misdemeanor.

(B) Upon conviction for a first offense, a person must be fined not more than two hundred dollars or imprisoned for not more than thirty days. Upon conviction for a second offense, must be fined not more than one thousand dollars or imprisoned for one year; and upon conviction for a third or subsequent offense, must be fined not more than five thousand dollars or imprisoned for not more than five years.

(C) Each violation constitutes a separate offense for purposes of the criminal penalties in this chapter. In addition, if the Attorney General finds that there has been a violation of this chapter, he may seek other relief, including injunctive relief, as the court considers appropriate against the person.

Section 58-10-90. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law including, but not limited to, the criminal penalties provided in Section 16-16-20.”

SECTION 3. Section 16-16-20 of the 1976 Code is amended by adding an undesignated subitem at the end to read:

“( ) It is unlawful for a person to wilfully, knowingly, maliciously, or without authorization to directly or indirectly access or cause to be accessed a contact point as defined in Section 58‑10‑10(1) that has been registered for more than thirty calendar days with the Public Service Commission, for the purpose of sending or causing to be sent a message in violation of Chapter 10, Title 58. The State Attorney General and the judicial circuit solicitors have the enforcement powers granted in Chapter 10, Title 58 in connection with the ‘Child Protection Registry’.”

SECTION 4. This act takes effect upon approval by the Governor.

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